IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.215 OF 1994.

Shri Sharad Dashrath Kapkar : Appellant.

versus

1] Bajirao Janardhan Bhosale

2] The Divisional Manager, United India Insurance Co.Ltd.Nashik: Respondents.

Mr.Kishor Patil with Mr.R.M.a Haridas h/f Mr.P.N. Joshi for the appellant.

None for the respondents.

CORAM : D.G.DESHPANDE,J.

DATED : 14th January 2005.

ORAL ORDER.

1. This is an appeal filed original opponent No.1 - the owner of the vehicle and his only contention is that even though he has been held liable to pay compensation to the claimant, Insurance Company - Respondent No.2 should also be jointly and severally liable because his

vehicle was insured with respondent No.2.

2. The trial Court granted award only against the appellant and not against the Insurance Company because, according to the trial Court, in the vehicle involved in the accident a person i.e. the passenger was taken in breach of the insurance policy. Counsel for the appellant states that the vehicle was the goods carrier vehicle and the person sitting in the vehicle at the time of accident was carrying his goods i.e. for which he has paid freight charges and which has come on record. On 29th May 1990 the petitioner/claimant was returning from his office. He got down at Vilholi to collect his luggage i.e. bag of rice which he had purchased at Vilholi. He came to the Agra Road with the rice bag and was awaiting for S.T. bus. At that time the truck No. MWD 6672 came from Bombay side and stopped near the claimant. The claimant after paying Rs.10/- as freight charges for transporting the rice bag sat in the truck. The truck while on way suddenly fell into the nala and the claimant sustained injuries.

3. Counsel for the appellant, therefore,

contended that if the vehicle was a transport vehicle that is meant for carrying luggage and goods, and if they were carrying luggage of the passenger after taking Rs.10/- as freight charges then it cannot be said that there was any breach of condition or policy. This aspect of the matter has not been rightly considered by the trial Court. Therefore, this appeal is partly allowed. The payment payable to Respondent No.1 shall be paid jointly and severally by the appellant as well as Respondent No.2.

[D.G.DESHPANDE]

14/01/2005 JUDGE.